ADMINISTRATIVE APPEAL OF IRIS BEAR HEELS
v.
ABERDEEN AREA DIRECTOR

IBIA 77-51-A Decided December 15, 1977

Appeal from decision of the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota, dismissing appeal from Superintendent's refusal to withdraw land from Tribal Grazing Unit No. 226.

Affirmed on different grounds.

1. Bureau of Indian Affairs: Administrative Appeals: Generally

   All owners of interest in property are "interested parties" within the meaning of 25 CFR 2.11. It was therefore improper for appellant to serve a copy of her notice of appeal only on those persons whom she considered to be "adverse parties."

2. Bureau of Indian Affairs: Administrative Appeals: Generally

   Notwithstanding that the notice of appeal is to be served on all interested parties, failure to do so does not make dismissal of the appeal mandatory.

3. Indian Lands: Grazing: Generally

   The Bureau of Indian Affairs is not required to withdraw allotted land from a range unit designated for grazing in accordance with 25 CFR 151 merely because a majority of the owners in the allotment have requested withdrawal.

APPEARANCES: Mario Gonzales, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HORTON

Iris Bear Heels, appellant, in an attempt to obtain a withdrawal of allotted land from Range Unit No. 226, acquired the written consent of a majority of the owners of the allotment. The Superintendent, Pine Ridge Agency, issued a written decision on January 6, 1977, in which the request for withdrawal was denied.

An appeal was filed with the Area Director, Aberdeen Area Ofiice, who summarily dismissed the appeal on March 2, 1977, for failure to serve a copy of the notice of appeal upon all interested parties as required by 25 CFR 2.11(a). The Area Director's decision was appealed to the Commissioner of Indian Affairs on March 10, 1977. On June 15, 1977, the Commissioner issued a statement that the appeal was being referred to the Board of Indian Appeals in accordance with 25 CFR 2.19(a)(2).

The subject appeal was received by the Board on July 12, 1977, and docketed on July 20, 1977. The briefing period expired on September 6, 1977.

On appeal, the appellant alleges that it was error for the Area Director to dismiss her appeal pursuant to 25 CFR 2.17(b) when she had served a copy of the notice of appeal on all "adverse parties." She further alleges that it was error for the Superintendent to refuse to withdraw certain allotted land from Range Unit No. 226 when a majority of the owners of such land joined in a request for withdrawal.

[1] With respect to appellant's first contention, we agree with the Area Director's holding that departmental rules of procedure require that a copy of the notice of appeal be served on all interested parties and that the term "interested parties" as used in 25 CFR 2.11(a) encompasses more than "adverse parties."

As applied to the case at hand, there can be no question that all owners of interest in the subject property, some of whom did not receive notice of the appeal, were entitled to notice. Cf. Holy Eagle v. Towle, 32 F.R.D. 591 (D.S.D. 1963).

[2] Notwithstanding the above, the Board has previously held that failure to serve notice of an appeal on an interested party does not make dismissal of the appeal mandatory. Administrative Appeal of J. B. Love v. Area Director, Aberdeen Area Office, 4 IBIA 74 (June 6, 1975). In this case the Board has no compunction in addressing the substantive issue raised by the appeal.

[3] As this is not a case involving the leasing or permitting of Indian land under Part 131 of 25 CFR, it is irrelevant that 25 CFR

131.6(b), discussed in appellant's brief, authorizes the owners of a majority interest in property to negotiate leases of land upon certain conditions. The sole question before us is whether the BIA is required to withdraw land from a range unit designated for grazing in accordance with 25 CFR 151 when a majority of the owners request withdrawal. Appellant has referred to no authority under 25 CFR 151, or any other relevant authority, which requires withdrawal under these circumstances and we know of none.

The Secretary is clearly charged with the responsibility of protecting individually owned lands designated for grazing under departmental rules, as well as lands eligible for grazing. Part of this responsibility is the improvement of the economic well being of the Indian people through proper and efficient resource use. See 25 CFR 151.2; Coomes v. Adkinson, 414 F. Supp. 975, 992 (D.S.D. 1976). To require the Secretary to withdraw lands from established range units upon petition by a majority of the owners, and no other showing, would severely frustrate the Secretary's performance of his prescribed fiduciary duty. We hold, therefore, that it was within the Superintendent's legal authority to refuse to withdraw the subject land from Tribal Grazing Unit No. 226.

Now, Therefore, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Area Director, Aberdeen Area Office, rendered March 2, 1977, dismissing the appeal of Iris Bear Heels, is AFFIRMED on different grounds.

This decision is final for the Department.

Done at Arlington, Virginia.

_____
Wm. Philip Horton
Administrative Judge

We concur:

_____
Alexander H. Wilson
Chief Administrative Judge

_____
Mitchell J. Sabagh
Administrative Judge